IN THE

Supreme Court of the United States

OCTOBER TERM 1977

No. 77-644

STATE OF MINNESOTA EX REL.
J. J. WILD, M.D., Ph.D.

Appellant,

vs.

JAMES C. OTIS, ESQUIRE,

Appellee,

and

STATE OF MINNESOTA EX REL.
J. J. WILD, M.D., Ph.D.,

Appellee,

vs.

OSCAR R. KNUTSON, ESQ., et al.,

Appellees.

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT
AND APPENDIX

Comes now the Appellant herein and respectfully shows the Court, pursuant to Rule 15 of the Supreme Court of the United States:

(a) The official opinion is Minnesota Supreme Court No. 481, cited at ___Minn. ____, 257 N.W. 2d 361 (1977) [Consolidated Cases Nos. 46898 and 46882) Appendix.

(b) Jurisdiction is invoked on the following grounds:

(i) The is an appeal from the Judgment of the Minnesota Supreme Court that a private citizen may not commence and maintain a private prosecution for crimes when the prosecuting attorney refuses to prosecute. The said Judgment of the Minnesota Supreme Court draws into question the validity of a state statute authorizing the Minnesota Supreme Court to establish and enforce Rules of Criminal Procedure. The rule enacted

thereunder permits criminal prosecutions only upon the written approval of the prosecuting attorney. The decision of the Minnesota Supreme Court is in favor of the validity of the statute and the rule enacted thereunder. The decision of the Minnesota Supreme Court is a constitutional reductio ad absurdum in that it attempts to establish the ridiculous principle that "political expediency" determines whether or not a guilty person is prosecuted. The victim of a crime is totally deprived of his ancient right to commence and maintain a criminal prosecution. The statutes pursuant to which this appeal is brought are 28 U.S.C.A. 1257 (2), 28 U.S.C.A. 2106 and 28 U.S.C. A. 2101 (c).

(ii) The date of the Judgment of the Minnesota Supreme Court is August 12,

1977. The Notice of Appeal was filed on Monday, October 24, 1977, with the Supreme Court of the State of Minnesota.

(iii) 28 U.S.C.A. 1257 (2) - pertinent provisions as follows:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be received by the Supreme Court as follows:
> (1) . . .
>
> (2) By appeal, where is drawn into question the validity of a statute of any state on the grounds of its being repugnant to the Constitution . . . of the United States, and the decision is in favor of its validity." (Compare 28 U.S.C.A. 2103 insofar as it may be relative to corollary issues.)

28 U.S.C.A. 2106:

> "The Supreme Court . . . may affirm, modify, vacate, set aside or reverse any judgment, decree or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree or order, or require such

> further proceedings to be had as may be just under the circumstances."

(iv) The following cases, it is believed, amply sustain the exercise of jurisdiction in this case:

Bantam Books, Inc. v. Sullivan, R.I. 1963, 83 S.Ct. 631, 372 U. S. 58, 9 L. Ed. 2d 584;

Winters v. People of State of New York, N.Y., 1948, 68 Sup.Ct.655, 338 U.S. 507, 92 L.Ed. 840;

Near v. State of Minnesota, Minn., 1931, 51 S.Ct. 625, 28 U.S.697, 75 L.Ed. 1357;

Duncan v. Louisiana, 1967, 391 U. S.145, (see esp. pp. 168-170);

Justice Black's Appendix in Adamson v. Calif., 1947, 322 U.S. 46 @ p. 73;

Griswold v. Conn., 1961, 381 U.S. 479;

Cooper v. Aaron, 1958, 358 U.S. 1;

Brown v. Board of Education, 330 U.S. 258.

(v) Chapter 250, Laws of Minnesota, 1971, as amended by Chapter 390, Laws of Minnesota, 1974 (M.S.A. 480.059) giving Minnesota Supreme Court power to promulgate rules.

Rule 2.02, Minnesota Rules of Criminal Procedure:

> "2.02 Approval of Prosecuting Attorney
>
> A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed."

(c) Questions presented:

(1) Does the victim of a crime have the right under the Federal Constitution as a citizen to prosecute the criminals

who perpetrated that crime against him when the government-paid prosecuting attorney refuses prosecution without legal justification when such refusal will effectively and permanently prevent the prosecution irrespective of the guilt of the accused as the statute of limitations will bar the prosecutions because of the delay.

Or, stated another way,

Do government prosecutors have absolute unrestrained exclusive discretion in refusing to commence or undertaking criminal prosecutions under the Federal Constitution?

The Minnesota Supreme Court held in the affirmative.

(d) Statement of the case and facts:

The case below before the Minnesota Supreme Court was a consolidated appeal

from two judgments dismissing appellant's complaints charging high state officials of the government, including active and retired Justices of the Minnesota Supreme Court, with the commission of felonies.

Judge Allen Oleisky of the Fourth Judicial District of Minnesota dismissed appellant's complaint charging Minnesota Supreme Court Justice James C. Otis with multiple counts of felonious perjury. (See Order and Memorandum, 4th District, App. pp. A-12 through A-18.)

Judge Sidney P. Abramson of the Second Judicial District of Minnesota dismissed appellant's complaint charging former Chief Justice Knutson, current Associate Justices Rogosheske, Otis, Peterson, Kelly, Todd and MacLaughlin, Governor Anderson, State Senator Jack Davies and Supreme Court Administrator Klein with

multiple counts of feloniously corrupting and feloniously conspiring to corrupt members of the State Legislature. (See Order and Memorandum, 2nd District, App. pp. A-18 through A-22.)

The decisions of both judges were on jurisdictional grounds. Therefore, for purposes of this appeal, all allegations of each complaint are unchallenged and stand as absolute fact. The motions of the defendants below themselves asked for dismissal on jurisdictional grounds not on grounds of innocence. The defendants charged with high office and public trust did not even declare their innocence, much less did they attempt to prove their innocence by affidavit or otherwise. The defendants below in effect told the trial courts "Even if we are guilty of these felonies, you are powerless to try us be-

cause the county attorneys involved have refused to prosecute."

In other words, the defendants below did not ask in the alternative in their motions for summary judgment because of innocence; they asked for dismissal on technical legalistic grounds of lack of "power" in the District Courts of Minnesota to hear criminal cases in their districts if commenced by citizens who have been victimized by crimes. Thus, in this appeal, appellant is entitled to presumption that the complaints are true and the defendants are guilty of felonious criminal acts.

The sole issue is whether or not the Fourth and Second Judicial Districts of Minnesota have "jurisdiction", i.e, power to try the defendants for the crimes. The defendants (respondents here) and

their counsel and the two trial judges admit by clear implication that had the respective county attorneys instituted the actions, they would have "jurisdiction".

The uncontroverted facts then are as recited above and as delineated in detail in the respective complaints. The Minnesota Supreme Court decision added little as it affirmed the trial courts.

The respondents are guilty of violating their public trust by the commission of felonious crimes against the appellant. The respective county attorneys refuse to prosecute appellant's complaints of their criminal acts without justification. The Statute of Limitations will forever bar these prosecutions unless this Court reverses and directs the trial of these respondents.

The Federal constitutional questions

raised in opposition to the motions to dismiss at trial level and in the Brief of Appellant before the Minnesota Supreme Court.

(d) The federal questions are substantial.

(i) Importance of Reaffirming Citizens' Right to Private Prosecution.

(aa) Public Interests Demand Right to Private Prosecution.

If this Court sustains the position taken by the courts below, to-wit: that the commencement of a criminal procedure is purely a "political" matter, resting solely in the discretion of the county attorney, equal protection under the law would be a mockery. Those with hig political connections could commit crimes with impugnity as a result of their personal whimsy or caprice. There would be

There would be in truth a fundamental breakdown of constitutional right.

All powers not specifically granted to the government are reserved to the people. (See United States Constitution Amendments IX and X.) The people must always retain their right to institute criminal proceedings when corrupt or incompetent public officials refuse to do their duty. I reiterate that nowhere in either the Minnesota Constitution or in the Federal Constitution has this residuary power been taken from the people and given exclusively to county or, for that matter, to any prosecutor.

The trial courts and the Minnesota Supreme Court below contend that Rule 2 of the Minnesota Rules of Criminal Procedure invalidates the fundamental right to private prosecution without constitutional

amendment and, in fact, without due process of any nature. As pointed out supra, the Minnesota Legislature simply delegated rulemaking power to standardize criminal procedure in the State of Minnesota to the Supreme Court. Rule 2, therefore, is nothing more than a procedural guideline and has no "substantive" effect in the law or the constitutional rights of citizens. As a matter of fact, prior to the effective date of the new Rules of Criminal Procedure, the Chief Justice of the Minnesota Supreme Court circulated the proposed rules and on Page 4 of the proposed rules, the following comment is applicable to Rule 2.02:

> "Rule 2.02 leaves to other laws the question of the available remedy when a local prosecutor refuses to approve a complaint."

Therefore, the courts below are clear-

ly in error.

(bb) Right of Appellant to Redress, as Victim of Crimes, Requires Private Prosecution.

Had I, as a citizen and victim, not undertaken to commence prosecution privately, the Statute of Limitations would have forever barred the defendants' (respondents here) responsibilities for their crimes. (See Minnesota Statutes Annotated 628.26.)

What lachrymose decadence in our Republic if the lower courts' decisions are affirmed! The trial courts and the Minnesota Supreme Court below held by necessary implication that high publis officials can commit felonious crimes against the citizens who gave them their elevated status with the power of absolution given to friendly county attorneys. The criminally corrupt governmental officials can be to-

tally insulated thereby from prosecution by county attorneys who hope to curry political favor by refusing to prosecute, irrespective of guilt or seriousness of the crime.

The orders of the Minnesota Supreme Court and trial courts must be reversed and the cases remanded for trial.

Respectfully submitted,

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APPENDIX

(TITLE OF CAUSES)

Endorsed
Filed August 12, 1977, John McCarthy, Clerk, Minnesota Supreme Court

S Y L L A B U S

1. Appellant judges must decide for themselves whether recusal is required in case in which party claims bias.

2. A private citizen has no authority to commence and maintain private prosecutions for alleged violations of criminal law.

Affirmed.

Considered and decided by Sheran, C. J., and Yetka, Scott, Winton* and Preece*, JJ., without oral argument.

O P I N I O N

SHERAN, Chief Justice.

These consolidated appeals raise the issue of whether a private citizen may commence and maintain private prosecu-

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Acting as Justice of the Supreme Court by appointment pursuant to Minn.Const.art. 6, § 2, and Minn. St. 2.724, subd. 2.

tions for alleged violations of the criminal law. We hold that he may not.

Prior to commencing the present action, plaintiff J. J. Wild, requested the county attorneys of Ramsey and Hennepin Counties to approve criminal complaints which he had prepared against defendants, but the respective county attorneys refused to prosecute. Plaintiff then tried unsuccessfully to persuade the grand juries of the two counties to issue indictments. Finally, plaintiff filed complaints himself in an attempt as a private citizen to prosecute defendants.

The complaint against defendants filed in Ramsey County alleged a violation of the criminal laws against conspiracy to commit a crime, Minn. St. 609.175, subd. 2, and corruptly influencing a legislator, §§ 609.425. The complaint against defendant Mr. Justice James C. Otis in Hennepin County alleged a violation of the criminal law against perjury, §§ 609.48. The complaints requested that the named defendants be convicted and sentenced according to law. The respective compl-

aints were dismissed by the district courts of Ramsey and Hennepin Counties, and these appeals from judgments followed.

1. A preliminary issue is presented by the affidavits of prejudice which plaintiff has filed against the special panel of justices considering his appeal.

Section 3.42, and the commentary thereto, of the A.B.A. Standards of Judicial Administration, Standards Relating to Appellate Courts (Approved Draft, 1977), state the appropriate standards and procedures to be followed in the case of challenges such as this:

"3.42 Disqualification of Judges.

"A judge of an appellate court should be subject to disqualification on the grounds set forth in the Code of Judicial Conduct recommended by the American Bar Association, and in any case in which the judgment under review is one by a court in whose decision he participated as judge in a lower court.

"Commentary

"An appellate judge should be subject to challenge for cause on the same grounds as a trial judge, and also when an appeal involves a

review of his own decision. The most difficult problem concerns the procedure to be employed. As in the challenge of a trial judge, if the challenge is sufficient on its face and any reasonable doubt of the judge's disinterestedness is suggested, the judge may be expected to disqualify himself. If he does not do so, in the case of a trial judge factual issues relating to disqualification should properly be determined by another judge. See § 2.32, Standards Relating to Trial Courts. In the case of an appellate judge, however, that procedure would subject the judge to decision of his disinterestedness by official peers with whom he may continue to serve in a collegial capacity in deciding the case. Moreover, because an appellate court decides questions on law rather than fact, the question of an appellate judge's 'bias' is often practically indistinguishable from the question of his views on the law, which are not properly subject to disputation through the recusal procedure. Given these complications, it is better that the question of recusal be decided by the judge himself. If he is a judge of an intermediate appellate court there remains the remedy of appeal from a decision in which he participates; if he is a judge of a supreme court, reliance must be placed on his recognition that a court should not only be disinterested but that it should appear to be so.

"In some jurisdictions, provision for peremptory challange of a trial judge is permitted. See Commentary to § 2.32 (b), Standards Relating to Trial Courts. This procedure is inappropriate in the case of an appellate judge. In the collegial decision-making of an appellate court an individual judge's purely personal views are of less significance than they would be in a trial court and he is subject to collegial restraint should he be inclined to act on them; an appellate judge has few occasions for exercising the broad discretion reposing in a trial judge; and in appellate litigation there is no occasion for the intense personal interaction between the judge and the lawyers and litigants that may occur in a trial court. Moreover, an appellate judge's established views on law and justice, at least up to a point, are a proper element of the contribution he makes to the function of an appellate court, particularly in the development of the law. A peremptory challenge might easily be abused to exclude a judge solely because a litigant disagreed with his views."

The three justices of the supreme court and the two district court judges assigned to the hearing of this matter pursuant to Minn. Const. art. 6, §§ 2, and Minn. St. 2.724, subd. 2, have app-

lied these standards for recusal and have determined that the affidavit of prejudice filed by plaintiff against them is without justification. District Court Judge Warren A. Saetre, originally assigned to consider this case, has recused for personal reasons.

2. As stated earlier, the issue which plaintiff raises in his appeal is whether a private citizen may commence and maintain private prosecutions for alleged violations of criminal law.

In answering this question, we start with Rule 17.01, Rules of Criminal Procedure. This rule contemplates that felonies are to be prosecuted by either indictment or complaint. The rule does not mention or allude to any right of private citizens to commence and maintain criminal prosecutions privately.

Rule 2.02, Rules of Criminal Procedure, governing prosecution by complaint, provides as follows:

> "A complaint shall not be filed or process issued thereon without the written approval, endorsed on the complaint, of the prosecuting attorney authorized to prosecute

> the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed."

This rule is in accord with A. B. A. Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function (Approved Draft, 1971), §§ 2.1, which provides: "The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline."

The comment to Rule 2.02. Rules of Criminal Procedure, states that "Rule 2.02 leaves to other laws the question of the available remedy when a local prosecutor refuses to approve a complaint." One obvious available remedy is for the aggrieved citizen to try to appear before the grand jury and persuade it to indict. While a citizen does not have a right to appear before the grand jury, he is free to attempt to get the grand jury to take action, and under Rule 18.04, Rules of

Criminal Procedure, the grand jury can permit an aggrieved citizen to appear as a witness for this purpose. The grand jury under Rules 18.01 and 18.03 consists of 16 to 23 members, randomly selected from a cross section of the county. Permitting citizens to take complaints directly to this body serves as a kind of "safety valve" and has much to commend it. See, commentary to §§ 2.1 of the A.B.A. Standards Relating to the Prosecution Function.[1]

There are other remedies available to an aggrieved citizen when a prosecutor refuses to commence a prosecution:

(a) Minn. Stat. 388.12 provides:

> "The judge of any district court may by order entered in the minutes at any term of court appoint an attorney of such court to act as, or in the place of, or to assist, the county attorney at such term, either before the court or grand jury. The person so appointed shall take the oath required by law of county attorneys and thereupon may perform all his duties at such term of court, but

[1] In this case, as we stated earlier, plaintiff tried to get the respective grand juries of Ramsey and Hennepin Counties to indict but was unsuccessful.

> shall receive no compensation where the county attorney is present at such term, except by his consent, and to be paid from his salary."

Arguably, a private citizen could petition the district court for action pursuant to this statute and the court could appoint a special prosecutor if it decided that this was necessary. See Comment, 65 Yale L. J. 209, 215. See, also, the discussion in the commentary to §§ 2.1 of the A.B.A. Standards Relating to the Prosecution Function. There may be constitutional objections to this statute, but that is not an issue which we need to decide. We merely cite this statute as one of the possible alternatives available in the case of allegedly unjustified prosecutorial inaction.

(b) Another possible remedy is provided by Minn. St. 8.01, which reads as follows:

> "The attorney general shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil causes of like nature in all other courts

> of the state whenever, in his opinion, the interests of the state require it. Upon request of the county attorney he shall appear in court in such criminal cases as he shall deem proper. Whenever the governor shall so request, in writing, he shall prosecute any person charged with an indictable offense; and in all such cases he may attend upon the grand jury and exercise the powers of a county attorney."

Under this statute a citizen could appeal to the governor, who then might order the attorney general to commence prosecution.

(c) A third potential remedy is mandamus. The problem with mandamus from the standpoint of an aggrieved citizen is that the decision whether to initiate a particular prosecution is discretionary[2] and therefore normally beyond the scope of mandamus. For a full discussion, see, Note, 13 Am. Crim. L. Rev. 563, 585.

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[2] See, State v. Mayhood, ___Minn.___, 241 N.W.2d 803 (1976), where we stated that there may be cases where a prosecutor properly may decline to prosecute even where evidence exists which would support a conviction. We in no way imply that the evidence would have supported convictions in this case.

In mentioning these alternatives, we do not mean to recommend them to plaintiff. Rather, we cite them merely to demonstrate that the approach taken in Minnesota is (a) to give the grand jury and the county attorney the authority to commence prosecutions (with each theoretically operating as a check on the unjustified inaction of the other), and (b) to provide safety-valve alternatives for use in extreme cases of prosecutorial inaction.

In arguing that a private citizen has a right to commence and maintain a criminal prosecution, plaintiff makes many of the arguments that are made in the leading law review article on the subject. What plaintiff neglects to mention is that the authors of the comment concluded that legislative authority was needed for a system of permitting private prosecution. Comment, 65 Yale L. J. 209, 233. Further, the model statute provided by the authors of the comment, like Minn. St. 388.12, authorizes appointment by the court of a substitute attorney and does not permit the aggrieved private citizen to prosecute the action himself.

Plaintiff has not cited and we have not found any authority justifying the instant actions. This is not surprising because to permit such prosecutions would entail grave danger of vindictive use of the processes of the criminal law and could well lead to chaos in the administration of criminal justice.

We are satisfied that the district courts acted properly in dismissing the attempted prosecutions.

Affirmed.

MR. JUSTICES Otis, Rogosheske, Peterson, Kelly, Todd, MacLaughlin, and Knutson took no part in the consideration or decision of this case.

* * * * * * * * * * * * * * * * * * * *

STATE OF MINNESOTA — IN DISTRICT COURT
COUNTY OF HENNEPIN — FOURTH JUDICIAL DISTRICT

STATE of Minnesota ex rel.
J.J. Wild, M.D.,Ph.D.,

Plaintiff, ORDER FOR

-vs- JUDGMENT OF DISMISSAL.

James C. Otis, Esq.,

Defendant. File No.720506

The above-entitled matter came on for hearing before the undersigned, one of the judges of the above-named Court, at a Special Term thereof on the 5th day of December, 1975, at the Government Center, City of Minneapolis, County of Hennepin, State of Minnesota.

Plaintiff appeared pro se; and Leonard J. Keyes, Esq., appeared on behalf of defendant.

The Court, upon oral arguments, together with all the files, records and proceedings herein, and being fully advised in the premises,

IT IS HEREBY ORDERED that the above-entitled action be dismissed because the Court lacks jurisdiction over the subject matter. Defendant is therefore entitled to judgment of dismissal against plaintiff, plus costs.

/s/Allen Oleisky
Judge of District Court

Dated this 26th day of February, 1976.

MEMORANDUM

Plaintiff in the instant action would havr this Court sustain the intiation of a criminal prosecution by one private

citizen against another. Plaintiff's pleadings, in which he alleges the commission of the crime of perjury by the defendant and demands that defendant be found guilty of and sentenced for this alleged crime by this court, have not been approved in writing by the Hennepin County Attorney, nor, in the certified unavailability of the Hennepin County Attorney, by a judicial officer authorized to issue process for alleged felonies.

This court's criminal jurisdiction is defined and governed by the due process clauses of the state and federal constitutions and by the Minnesota Rules of Criminal Procedure. These Rules, constituting the rudiments of procedural due process, set forth the exclusive cases of criminal jurisdiction. Rule 10.01 provides in pertinent part:

> "Pleadings in criminal proceedings shall be by the indictment, complaint or tab charge and the pleas prescribed by these rules . . . "

Rule 17.01 provides that:

> "An offense which may be punished by life imprisonment shall be prosecuted by indictment. Any other offense defined by state law may be

> prosecuted by indictment or by a complaint as provided in Rule 2 . . . "

Rule 2.02 provides that:

> "A complaint shall not be filed or process issued thereon without the written approval of the prosecuting attorney authorized to prosecute the offense charged, unless such judge or judicial officer as may be authorized by law to issue process upon the offense certifies on the complaint that the prosecuting attorney is unavailable and the filing of the complaint and issuance of process thereon should not be delayed."

Comment, Rule 2 states that "Under these rules (See Rules 10.01, 3.01, 17.01) the complaint, the tab charge and indictment are the only accusatory pleadings by which a prosecution may be initiated and upon which it may be based . . . Rule 2.02 requires the prosecuting attorney's written approval of the filing of a complaint. This is in accord with ABA Standards, Prosecution Function 3.4 (Approved Draft, 1968) that the decision to institute criminal proceedings shall be initially and primarily the responsibility of the prosecutor."

In view of the fact that the Hennepin County Attorney, the prosecuting attorney authorized to prosecute the offense charged in the instant action, has not approved the issuing of a complaint against defendant herein, either in writing or otherwise, and the fact that the Hennepin County Attorney is and has been available at all times, this court (or any other court) does not have jurisdiction or authority to entertain this action. The determination of whether or not to institute a criminal prosecution is purely a prosecutorial function. Furthermore, it should be noted that under Rule 30 of the of the Minnesota Rules of Criminal Procedure, the prosecuting attorney has the absolute right to dismiss a complaint even without the court's approval. The prosecutorial function is neither judicial nor legislative, but rests exclusively in the hands and discretion of those public authorities to whom it has been entrusted by constitutional and statutory mandates. See: State ex rel. Kurkierewicz v. Cannon, 42 Wis.2d 368, 166 N.W. 2d 255 (1969) Criminal prosecutions can-

not rest in the hands of private citizens.

When a local prosecutor refuses to approve a complaint, as referred to in Comment, Rule 2.02, the remedy available is to seek indictment by the grand jury, or should this effort fail (as it did with regard to plaintiff's allegations in the instant action since it returned a No Bill against defendant when the case was presented to it), to resort to the electorate.

* * * * * * * * * * *

JOHN JULIAN WILD, M.D.,Ph.D.

15 April 1976

The Honorable Allen Oleisky

. . .

Ref. File No. 720506,Wild v. Otis

I am preparing an appeal in the above entitled matter and I noticed in your memorandum (page 2) you erroneously state that the grand jury returned a no bill in favor of the defendant Judge Otis. This is not the case: the grand jury, being led by the prosecuting attorney, did nothing. I would appreciate your reissuing your memorandum so that it is in conformity with the facts.. . .

(Above letter ordered attached to original Order in File No. 720506 by Judge Oleisky.)

* * * * * * * * * * *

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

STATE OF MINNESOTA EX REL.
J. J. WILD, M.D.,Ph.D.,
Plaintiff,

vs.

OSCAR R. KNUTSON, ESQ.,et al.
Defendants.

O R D E R
(File No.409747)

The above matter came on for hearing before the undersigned Judge of the District Court at a Special Term of said court held on April 13, 1976, in St.Paul, Minnesota.

Plaintiff appeared in person, pro se; and Defendants appeared by Thomas H. Jensen, Esq., Special Assistant Attorney General for Minnesota. In addition, James M. Williams, Esq., appeared as observer with plaintiff and was allowed to address the Court on plaintiff's behalf.

Defendant moved to dismiss Plaintiff's action on the grounds that there is no

jurisdiction in this court to hear the action, and further on the grounds that Plaintiff's complaint failed to state a claim upon which relief could be granted.

The Court has reviewed the files and records herein, and on the pleadings, the memoranda of the parties and their oral arguments at the time of hearing, makes the following order:

IT IS ORDERED:

(1) Defendants' motion to dismiss Plaintiff's cause of action is herewith granted;
and

(2) Plaintiff's cause of action is dismissed with prejudice.

Dated: April 20, 1976

/s/Sidney P. Abramson
JUDGE OF DISTRICT COURT

(Title of Cause)

MEMORANDUM

The motion to dismiss arises out of plaintiff's action which, if properly understood by this court, alleges that various violations of Minnesota Statutes amounting to criminal offenses were presented to the Ramsey County Prosecutor, who refused to accept and prosecute, and,

what is more, in conjunction with the unnamed foreman of the Ramsey County Grand Jury, reportedly refused plaintiff's request to appear before that body resulting in the running of the Statute of Limitations on the asserted criminal conduct. These facts, according to plaintiff, grant this Court jurisdiction to entertain this "citizens action" to insure "the alleged crimes will (not) go unprosecuted and unpunished."

The named defendants include the former Chief Justice of the Minnesota Supreme Court; five Associate Justices; the Court Administrator; a State Senator and Minnesota's Governor. Plaintiff contends in summary that from January 1973 through March 9, 1973, defendants conspired to influence the Legislature by concealment and deception to hide from the Legislature the asserted interrelationship between the State Supreme Court, a local foundation and local insurance companies, apparently to the detriment of plaintiff insofar as the Legislature enacted into law Laws of Minnesota 1973, Chapter 18, Section 1. The above section allowed disqualified judges to name their successors to hear

an appeal in a case plaintiff had successfully presented in the District Court of Hennepin County. The appeal resulted in a reversal of the prior district court verdict.

Plaintiff contends this conduct is tantamount to two felonies, specifically conspiracy as well as corruptly influencing legislators. Plaintiff accordingly prays that the named defendants be adjudged guilty of two counts of violation of the criminal statutes, and further that they be sentenced according to law.

Defendants' motion includes a request for an order dismissing the whole action on grounds that the Court lacks jurisdiction of both the subject matter and personal jurisdiction of the defendants; and further on the grounds that plaintiff's complaint fails to state a cause of action or a claim upon which relief may be granted. For all of the reasons stated by defendants, plaintiff's action is herewith dismissed. The Court has neither personal nor subject matter jurisdiction. (See Rule 2.02, 10.01, 17.01 MRCP.) In addition, plaintiff's claim fails to

state a cause of action, as a private citizen has no authority to bring a criminal action, that is, a private citizen cannot state a claum upon which criminal sanctions alone can be based. Keenan v. McGrath, 328 Fed 2d 610 (First Cir.1964).

In U.S. ex rel Savage v. Arnold, 403 Fed.Sup. 172 (ED Pa) 1975, the Court uses language which recognizes that in an appropriate case a court may well refer a private criminal complaint to a United States Attorney sua sponte without the formalistic steps provided for by Federal procedure. "However realtor's complaint, as he has presented it, is not worthy of such consideration, since it is totally lcaking in the essential elements required. . . " 403 FS 172 at 175.

Plaintiff's action here is worthy of no consideration since it lacks any of the essential elements required. Accordingly, defendants' motion for dismissal is granted.

SPA.